

A dietary supplement could be classified as a food taxed at the low rate of tax if it is not sold for immediate consumption. See 86 Ill. Adm. Code 130.310 (This is a GIL).

January 22, 2002

Dear Xxxxx:

This letter is in response to your letter dated November 13, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

Our client, AAA, sells a variety of weight loss, nutritional, and food products; dietary supplements; vitamins; snacks; and protein bars. Petitioner does not have stores or sales representatives in Illinois. Instead, Petitioner sells its products to independent distributors in Illinois who in turn sell the products out of their homes to their own customers.

AAA is currently registered for Illinois sales and use tax and is reporting and paying sales and use tax on all of its distributors' product sales in Illinois. After reviewing the attached letter ruling previously made by the Illinois Department of Revenue for another taxpayer, it appeared to us that AAA should be collecting and remitting Illinois food tax, instead of sales and use tax, on the sales of its products.

AAA would like a letter ruling from the Department on which tax it should be collecting for each of the products listed in each of the enclosed catalogs.

I look forward to hearing from you soon. If you have any questions or need additional information on any of the products, please call me or my associate.

For your information and reference please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold, drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular sales tax rate of 6.25%, plus any applicable local taxes.

Food is defined as "any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice". See Section 130.310(b)(1).

Taxation of food at the reduced sales tax rate depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold, therefore, the nature of the premises where the food is sold is a factor in determining the applicable sales tax rate. All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax unless the facility utilizes a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3).

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all food sales if a majority of the gross receipts from food resulted from food items sold in a state of preparation for immediate consumption. However, where an establishment primarily sells food (over 50%) in bulk, such establishment will incur the reduced rate on all food items, except soft drinks, food prepared for immediate consumption and alcoholic beverages, which are always taxed at the high rate.

In general, nutritional supplements and vitamins are included within the definition of food and are taxed at the reduced 1% sales tax rate. The dietary supplements described in the literature included with your letter would classify as food, as that term is defined under the regulations. Therefore, such products would qualify for the reduced rate, as long as they are not considered food sold for immediate consumption after application of the criteria detailed in this letter and in 86 Ill. Adm. Code 130.310.

Additionally, some of the dietary supplements sold by AAA could also qualify for the lower tax rate because of the classification of those products as a drug. Under the regulation, medicine or drug is defined as "any pill, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities". See Section 130.310(c)(1). If any of the dietary supplements sold by AAA purport to have medicinal qualities, they could be considered a drug and thus taxed at the lower, 1% sales tax rate.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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